

**ASSEMBLY BILL**

**No. 79**

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**Introduced by Assembly Member Blakeslee**

September 8, 2009

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An act to add Section 57006 to the Health and Safety Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 79, as introduced, Blakeslee. Environmental protection: California Environmental Protection Agency: rules: economic analysis.

Existing law requires the California Environmental Protection Agency, or a board, department, or office within the agency, to enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, or any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that are recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule, as defined to include specified regulations and policies, proposed by any board, department, or office within the agency, and prescribes procedures for conducting that scientific peer review.

This bill would, at or before the time a rule proposed for adoption is made available to the public at a public workshop or for purposes of public comment, require the California Environmental Protection Agency, or a board, department, or office within the agency, to complete and place into the rulemaking record an economic analysis, as defined, of the rule. The bill would also require the agency to solicit public

comment on the economic analysis in the same manner as on the proposed rule.

The bill would allow any interested person, within 15 calendar days of the date of the public workshop or public hearing, to request the agency to submit the economic analysis to external peer review, and would prescribe procedures for conducting the external peer review.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2009, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The people of the State of California expect that their state
- 4 government will enact laws and promulgate regulations to the
- 5 general benefit of the people and that regulations promulgated will
- 6 tend to maximize benefits to society while minimizing costs.
- 7 (b) Administrative and regulatory actions can have significant
- 8 and far-reaching consequences for individuals, nonprofit
- 9 organizations, and businesses throughout the state.
- 10 (c) Administrative and regulatory actions should be based on
- 11 adequate information concerning the need for and consequences
- 12 of the proposed action.
- 13 (d) Administrative and regulatory actions that maximize benefits
- 14 to society while minimizing costs are preferable to actions that
- 15 tend toward the opposite.
- 16 (e) The agencies, boards, departments, and offices of the state
- 17 generally strive to promulgate regulations that benefit the people
- 18 of the state.
- 19 (f) The Legislature has in numerous instances required that the
- 20 agencies, boards, departments, and offices of the state take cost
- 21 considerations into account when promulgating regulations.

1 (g) The Legislature has specifically required that the scientific  
2 basis of environmental protection regulations be subject to analysis  
3 and peer review.

4 (h) The costs and benefits of environmental protection  
5 regulations should also be subject to analysis and peer review.

6 SEC. 2. Section 57006 is added to the Health and Safety Code,  
7 to read:

8 57006. (a) For purposes of this section, the following terms  
9 have the following meanings:

10 (1) "Benefit" means the reasonably identifiable significantly  
11 favorable effects that are expected to result from implementation  
12 of, or compliance with, a rule.

13 (2) "Cost" means the reasonably identifiable significantly  
14 adverse effects that are expected to result from implementation  
15 of, or compliance with, a rule.

16 (3) "Economic analysis" means an evaluation of the costs and  
17 benefits of a rule, quantified to the extent feasible and appropriate  
18 and otherwise qualitatively described, that is prepared at a level  
19 of detail appropriate and practicable for reasoned decisionmaking.

20 (4) "Rule" means either of the following:

21 (A) A regulation as defined in Section 11342.600 of the  
22 Government Code.

23 (B) A policy adopted by the State Water Resources Control  
24 Board pursuant to the Porter-Cologne Water Quality Control Act  
25 (Division 7 (commencing with Section 13000) of the Water Code)  
26 that has the effect of a regulation that is adopted in order to  
27 implement or make effective a statute.

28 (b) At or before the time a rule proposed for adoption is made  
29 available to the public at a public workshop or for purposes of  
30 public comment, the agency, or a board, department, or office  
31 within the agency, shall complete and place into the rulemaking  
32 record an economic analysis of the rule and shall solicit public  
33 comment on the economic analysis in the same manner as on the  
34 proposed rule.

35 (c) Any interested person may, within 15 calendar days of the  
36 date of the public workshop or public hearing, request the agency,  
37 or a board, department, or office within the agency, to submit the  
38 economic analysis to external peer review. If the agency, or a  
39 board, department, or office within the agency, receives such a  
40 request, it shall enter into an agreement with the National Bureau

1 of Economic Research, the University of California, the California  
2 State University, or a group of economists of comparable stature  
3 and qualifications that is selected by the President of the University  
4 of California, to conduct an external peer review of the economic  
5 analysis for any rule proposed for adoption if, within 15 calendar  
6 days of making the request, the person requesting the external  
7 economic analysis peer review enters into an enforceable agreement  
8 with the agency, or a board, department, or office within the  
9 agency, that requires that person to fully reimburse the agency, or  
10 a board, department, or office within the agency, for all of the costs  
11 associated with conducting the external peer review.

12 (d) (1) A person shall not serve as an external economic analysis  
13 peer reviewer for a proposed rule if that person participated in the  
14 development of the economic analysis of the proposed rule.

15 (2) The person who requested the economic analysis peer  
16 review, a person affiliated with the requester, and personnel of the  
17 agency, or a board, department, or office within the agency, shall  
18 not participate in the selection of the individual external economic  
19 analysis peer reviewers or contact or communicate with the  
20 individual peer reviewers during the pendency of the peer review.  
21 The identity of the individual peer reviewers shall remain  
22 confidential until the external economic analysis peer review entity  
23 submits its written report to the agency, or a board, department,  
24 or office within the agency. The agency, or a board, department,  
25 or office within the agency, may contact or communicate with the  
26 external economic analysis peer review entity for the purposes of  
27 entering into a contract with that entity, as described in subdivision  
28 (c), and for purposes of providing information as described in  
29 paragraph (1) of subdivision (e).

30 (e) The agency, or a board, department, or office within the  
31 agency, shall not take any action to adopt the final version of a  
32 rule unless all of the following conditions are met:

33 (1) The agency, or a board, department, or office within the  
34 agency, submits the proposed rule, along with the economic  
35 analysis, findings, conclusions, and assumptions on which the  
36 economic analysis is based, and the supporting economic data and  
37 studies, public comment on the economic analysis, and other  
38 appropriate materials, to the external economic analysis peer review  
39 entity for its evaluation.

1 (2) The external economic analysis peer review entity, within  
2 the timeframe agreed upon by the agency, or a board, department,  
3 or office within the agency, and the external economic analysis  
4 peer review entity, prepares a written report that contains an  
5 evaluation of the economic analysis. The agency, or a board,  
6 department, or office within the agency, may accept the findings  
7 of the external economic analysis peer review entity, in whole or  
8 in part, and may revise the proposed rule accordingly. If the agency,  
9 or a board, department, or office within the agency disagrees with  
10 any aspect of the findings of the external economic analysis peer  
11 review entity, it shall explain, and include as part of the rulemaking  
12 record, its basis for arriving at that determination.

13 (3) A public hearing is conducted to provide opportunity for  
14 public comment on the written report of the external economic  
15 analysis peer review entity and any explanation of disagreement  
16 with the report included in the rulemaking record by the agency,  
17 or a board, department, or office within the agency. Notice of a  
18 public hearing on adoption of the final version of a rule shall not  
19 issue until the public hearing described in this paragraph is  
20 concluded.

21 (f) The requirements of this section do not apply to any  
22 emergency regulation adopted pursuant to subdivision (b) of  
23 Section 11346.1 of the Government Code.

24 (g) This section does not limit the authority of an agency, or a  
25 board, department, or office within the agency, to adopt a rule  
26 pursuant to the requirements of a statute that authorizes or requires  
27 the adoption of the rule.

28 SEC. 3. This act addresses the fiscal emergency declared by  
29 the Governor by proclamation on December 19, 2009, pursuant  
30 to subdivision (f) of Section 10 of Article IV of the California  
31 Constitution.

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